IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 1204 of 2006

Date of Decision: 26.9.2006

Karnail Singh

...Appellant.

Versus

Raj Kumar

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. R.K.Girdhar, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

This regular second appeal filed by the defendant is directed against the judgment and decree dated 23.11.2005 passed by the lower appellate court whereby the judgment and decree dated 29.10.2004 passed by the trial court decreeing the suit of the plaintiff has been affirmed.

The case of the plaintiff as set out in the plaint is that on 27.11.1998, the defendant entered into an agreement to sell the house/property in dispute in favour of the plaintiff for a consideration of Rs.1,75,000/- and received a sum of Rs.80,000/- as earnest money at the time of execution of the agreement. As per the terms of the agreement, the sale deed was to be executed on or before 20.2.2000 after receiving the balance sale consideration. It was pleaded that on 17.11.1999, the defendant received another sum of Rs.70,000/- from the plaintiff towards the earnest money and thus, a total earnest money of Rs.1,50,000/- was paid by the plaintiff to the defendant and the date of execution of the sale deed

was also extended upto 28.12.2000, a writing in this regard was also made. It was further pleaded that the plaintiff was ready and willing to get the sale deed executed but the defendant failed to perform his part of the agreement and therefore, committed the breach of the agreement to sell.

Upon notice, the defendant filed written statement raising various preliminary objections. It was admitted that the defendant was owner of the property in dispute. All other allegations have been controverted and prayer for dismissal of the suit was made.

On the pleadings of the parties, the following issues were framed by the trial court:-

"1. Whether the defendant executed agreement to sell of the suit property in favour of plaintiff on 27.11.1998 on receipt of Rs.80,000/- as earnest money? OPP

2. If issue No.1 is proved, whether the plaintiff always remained ready and willing to perform his part of the agreement/contract? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the suit is within limitation? OPD

5. Relief."

The trial court took issues No.1 and 2 together being interconnected and after appreciation of evidence came to the conclusion that the defendant entered into an agreement with the plaintiff to sell the disputed house for consideration of Rs.1,75,000/- and received earnest money of Rs.1,50,000/- on 27.11.1998 and further that plaintiff throughout remained ready and willing to perform his part of the contract and therefore, the plaintiff is entitled to the specific performance of the agreement to sell dated 27.11.1998 Ex.P1. On the basis of the aforesaid finding, the suit filed

by the plaintiff was decreed vide judgment and decree dated 29.10.2004. On appeal, the lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 23.11.2005.

Learned counsel for the appellant has made efforts to reappreciate the findings recorded by the courts below. However, he could not pin point any error in the concurrent findings of fact recorded by the courts below which may call for interference by this Court in the regular second appeal. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

September 26, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**